

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60331-CR-COHN

UNITED STATES OF AMERICA,

vs.

SCOTT W. ROTHSTEIN,

Defendant.

ORDER GRANTING JOINT MOTION TO APPROVE SETTLEMENT [DE 845]

THIS CAUSE is before the Court on the Joint Motion to Approve Settlement; Appoint Michael I. Goldberg as Restitution Receiver; Approve 18 U.S.C. § 3664(j) Protocols; Approve Distribution Protocols; and Request to Set Joint Hearing [DE 845] ("Motion") filed by the United States and the Liquidating Trustee. The Court has carefully reviewed the Motion, Limited Objections filed by the Razorback Parties ("the Limited Objections") [DE 866], and the Government and Liquidating Trustee's joint response to these Limited Objections [DE 868]. The Court has also reviewed other relevant portions of this case file and is advised of the premises. No hearing on the Motion is necessary.

In their Limited Objections, the Razorback Parties state that they "support the Court's approval of the proposed Settlement." [DE 866 at 2.] They request, however, that certain issues "be preserved as a matter of due process in any order approving the proposed settlement." [*Id.*] They ask the Court to "make clear" that these issues are "preserved for further consideration by the Court at an appropriate time." [*Id.* at 11.] In their joint response, the Government and Liquidating Trustee represent that "the

reservation of objections, advanced by the Razorback Parties, is consistent with the language of the proposed order" approving the Settlement Agreement. [DE 868 at 2.] Therefore, the Court will include the clarifying language that the Razorback Parties request. The Court also orders the Restitution Receiver to file a Distribution Schedule, under seal, that identifies Qualifying Victims by name, in paragraph 6(a) below.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:¹

1. The Motion [DE 845] is **GRANTED**. The Court finds, based on the entire record of this case, that this Settlement is fair, equitable, and in the best interests of the victims of Scott Rothstein's scheme.

2. The Settlement Agreement is **APPROVED**. The United States and the Liquidating Trustee are **AUTHORIZED** to take all action necessary to effectuate the Settlement Agreement.

3. Michael I. Goldberg is appointed the Restitution Receiver. The Restitution Receiver shall have all of the duties and powers set forth in the Settlement Agreement and the Motion. Additionally and without limitation, he is specifically **AUTHORIZED** to take any action necessary to effectuate and implement the Settlement Agreement, including, but not limited to, filing any paper or pleading in this Court or elsewhere as is appropriate in his judgment to effectuate and implement the Settlement Agreement.

4. The Restitution Receiver shall have standing to raise any position that is available to the United States or the RRA Trust. The Restitution Receiver shall have standing to bring any position, claim, defense, or cause before the Court. To the extent the United States has standing to bring such position, claim, defense, or cause, the

¹ Any term not specifically defined herein shall have the same meaning as in the Motion or the Settlement Agreement.

Restitution Receiver's standing shall be concurrent with that of the United States.

However, the United States's participation, while welcome, shall not be required for the Restitution Receiver to advance any position, claim, defense, or cause consistent with the Settlement Agreement before this Court or any other court, including, without limitation, any appeal.

5. The Restitution Receiver is **AUTHORIZED** to take any action necessary to protect or monetize any of the Restitution Assets (as defined in the Settlement Agreement) and to make distributions to Qualifying Victims in accordance with the Settlement Agreement and applicable law. Any issue relating to the scope of this receivership shall be determined in the first instance by this Court. The Restitution Receiver may retain any professional(s) he deems necessary to carry out his responsibilities. However, if any professional retained by the Restitution Receiver is not also a retained professional of the Liquidating Trustee, such professional must be approved by the Bankruptcy Court.

6. The 18 U.S.C. § 3664(j) protocols, as described in the Motion and Settlement Agreement, are **APPROVED** in all respects, including, without limitation, the following:

a. Within fourteen (14) days of the entry of this Order, the Restitution Receiver and the United States shall jointly file the Distribution Schedule (as defined in the Settlement Agreement). The Distribution Schedule shall identify Qualifying Victims by VNS number only. In addition, the Restitution Receiver shall file a Distribution Schedule, under seal, that identifies Qualifying Victims by name.

b. The Distribution Schedule will indicate for each Restitution Claim:

i. The original allowed amount of the Restitution Claim;

ii. Any Collateral Source Recoveries that are applied to reduce the distribution due on any Restitution Claim; and

iii. Which Restitution Claims, if any, are to be treated as Subordinated Restitution Claims (as defined in the Settlement Agreement).

c. Any Qualifying Victim shall have twenty-one (21) days from the date of the notice of the Distribution Schedule to file an objection with the District Court to the proposed treatment of their Restitution Claim. For purposes hereof, the date of notice shall mean the date on which the Distribution Schedule is mailed to the Qualifying Victims through the VNS. **Any objection must be signed under penalty of perjury by the holder of the Restitution Claim.**

d. Upon resolution of the objections, the Court will enter a Final Amended Restitution Order.

7. The Distribution Protocols, as described in the Motion and Settlement Agreement are **APPROVED** in all respects.

8. Notwithstanding the foregoing, the Court will consider the following issues upon timely objection made in accordance with the procedures provided in the Settlement Agreement:

a. Whether any victim's right to full compensation for its losses may include recovery for interest and attorneys' fees;

b. Whether an adjudicated aider and abettor of Rothstein's fraud should be permitted to participate in any restitution distributions;² and

c. If there are surplus funds available in this proceeding after payment of all restitution claims and expenses of the Restitution Receiver, how such surplus funds should be disposed of, including whether they should be used to pay interest and/or attorneys' fees to victims, or whether they should be disbursed to the RRA bankruptcy estate and distributed in accordance with the confirmed RRA bankruptcy plan.

9. The Court will retain jurisdiction over all aspects of the Settlement Agreement, except for approval by the Bankruptcy Court and the Bankruptcy Court's oversight over the fees and costs of the Restitution Receiver and his professionals.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 10th day of September, 2014.



JAMES J. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF.

² To this end, the Court observes that a co-conspirator that participated in an illegal fraud "cannot be a 'victim' of that fraud" entitled to restitution under the MVRA. In re Wellcare Health Plans, Inc., 754 F.3d 1234, 1239 (11th Cir. 2014).